

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**PLAINTIFFS’ MOTION TO COMPEL
NAMED PLAINTIFFS’ A-FILE
INFORMATION**

**NOTE ON MOTION CALENDAR:
January 24, 2020**

I. INTRODUCTION

Defendants continue to wrongly withhold significant information and analysis, created by Defendant U.S. Citizenship and Immigration Services (USCIS), about Named Plaintiffs that is highly relevant to their claims challenging the CARRP and related extreme vetting programs.¹ Plaintiffs move for an order compelling Defendants to produce information regarding how officers evaluated whether and concluded that a national security concern existed with respect to

¹ Defendants refuse to acknowledge publicly whether the Named Plaintiffs were subjected to CARRP. Named Plaintiffs, however, all plausibly alleged in the Second Amended Complaint that their applications were subjected to CARRP. *See* Dkt. 47 (SAC), Dkt. 69 (order on Defendants’ Motion to Dismiss). To the extent their applications were subjected to CARRP, Defendants should provide the information regarding why as further explained in this brief.

1 the Named Plaintiffs. Defendants continue to withhold the “articulable link” connecting Named
2 Plaintiffs to an activity, individual, or organization as described in sections 212(a)(3)(A), (B), or
3 (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act.

4 II. PROCEDURAL BACKGROUND

5 Plaintiffs’ multi-year efforts to obtain information on why Named Plaintiffs’ applications
6 were subject to CARRP are chronicled in a prior motion to compel at Dkt. 221 at 3–4.

7 Ultimately, the Court permitted Defendants to redact information originating from law
8 enforcement agencies external to USCIS. *See* Dkt. 274 at 5. But the Court ordered Defendants to
9 produce “why” information that originated solely within USCIS. *Id.* On this point, the Court
10 stressed that “the ‘internal’ vetting procedures used by USCIS to be most relevant for the current
11 dispute, and the Court [saw] little justification for withholding this information based on the law
12 enforcement privilege.” *Id.* Defendants re-produced Named Plaintiffs’ A-files but significant
13 redactions with respect to USCIS-generated analysis remain.

14 On December 18, 2019, Plaintiffs emailed Defendants noting remaining concerns with
15 Named Plaintiffs’ A-files. Declaration of Cristina Sepe ISO Motion to Compel Named Plaintiffs’
16 A-File Information (“Sepe Decl.”) ¶ 2. Following the parties’ December 31, 2019 meet and
17 confer, Plaintiffs sent Defendants, by Bates numbers, documents within each Named Plaintiff A-
18 files that Defendants should re-review. Specifically, Plaintiffs noted where significant redactions
19 were made to USCIS memoranda and worksheets, entirely redacting information explaining the
20 basis for USCIS’s concerns, and where entire pages that were redacted, rendering it impossible
21 to evaluate Defendants’ privilege assertions. *See id.*, Ex. A. On January 8, 2020, Defendants
22 responded that the A-files were properly redacted and would not reproduce the A-files. *See id.*,
23 Ex. B.

24 III. MEET AND CONFER CERTIFICATION

25 On December 31, 2019, the parties held a telephonic meet and confer to avoid the Court’s
26 involvement in this dispute. Sepe Decl. ¶¶ 3–4. The parties further exchanged email

1 communications regarding this issue following the parties’ meet and confer. *See id.*, Ex. A and
 2 B. Despite good faith efforts, the parties remain at an impasse regarding this issue.

3 IV. LEGAL STANDARD

4 Rule 26 authorizes broad discovery “regarding any nonprivileged matter that is relevant
 5 to any party’s claim or defense...” Fed. R. Civ. P. 26(b)(1); *see Broyles v. Convergent*
 6 *Outsourcing, Inc.*, No. C16-775-RAJ, 2017 WL 2256773, at *1 (W.D. Wash. May 23, 2017)
 7 (“Most importantly, the scope of discovery is broad.”). The party opposing discovery “carr[ies] a
 8 heavy burden of showing why discovery was denied.” *Blankenship v. Hearst Corp.*, 519 F.2d
 9 418, 429 (9th Cir. 1975). The party seeking to compel discovery need only show that its request
 10 complies with the broad relevancy requirements of Rule 26(b)(1) to place this heavy burden on
 11 the opposing party. *Colaco v. ASIC Advantage Simplified Pension Plan*, 301 F.R.D. 431, 434
 12 (N.D. Cal. 2014).

13 V. ARGUMENT

14 Missing from Named Plaintiffs’ A-files are unredacted explanations for why and how
 15 USCIS officers came to conclude a national security concern existed regarding their immigration
 16 benefit applications and thus appropriate for CARRP processing. *See* Policy for Vetting and
 17 Adjudication Cases with National Security Concerns at 3–4, accessed at:
 18 [https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/
 19 Policies_and_Manuals/CARRP_Guidance.pdf](https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf) (last visited January 9, 2020). This information
 20 relates to the processing of Named Plaintiffs’ “processing of immigration benefits” and “highly
 21 relevant to Plaintiffs’ claims.” Dkt. 274 at 5.

22 An individual is subject to CARRP if USCIS determines that they have a “national
 23 security concern,” which is broadly defined as “an articulable link—no matter how attenuated or
 24 unsubstantiated—to prior, current, or planned involvement in, or association with, an activity,
 25 individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B)
 26 of the INA.” Dkt. 47 ¶ 62; Dkt. 74 at 20. “[A]n individual need not be actually suspected of

1 engaging in any unlawful activity or joining any proscribed organization to be branded a national
2 security concern under CARRP.” Dkt. 47 ¶ 63; Dkt. 74 at 20. Instead, people can be subjected to
3 CARRP for acts such as making donations to a charitable organization without knowing that the
4 organization was engaged in proscribed activity, travelling through or residing in certain areas,
5 making a transfer of funds, being employed in certain occupations, having government
6 affiliations, or simply being an associate of an individual under suspicion by the U.S.
7 government. *See* Dkt. 47 ¶¶ 73–74; Dkt. 74 at 23.

8 Plaintiffs are entitled to the analysis done by USCIS officers to establish a national
9 security concern, but Named Plaintiffs’ A-files continue to leave this information largely
10 redacted. *See, e.g.*, Sepe Decl., Ex. C (sealed) (redacting information on identifying NS
11 Concern); Ex. D (sealed) (redacting information regarding articulable link).² This information is
12 very relevant to Plaintiffs’ claims: If Named Plaintiffs’ information reveals that their applications
13 were subject to CARRP for reasons that are vague, overbroad, or discriminatory, that
14 information would further undercut CARRP’s statutory and constitutional validity.

15 Moreover, entire bodies of memoranda from USCIS remain redacted or entire spans of
16 pages are wholly redacted as law enforcement privileged despite the Court’s repeated
17 admonitions “to use the privilege deliberately” and “to be exacting with which documents fall
18 within this privilege.” Dkt. 148 at 5; Sepe Decl., Ex. E (sealed) (redacting the body of a USCIS
19 memorandum), and Ex. F (redacting twelve consecutive pages); *see also* Oct. 24, 2019 Tr. 12:6-
20 10 (expressing concerns with Defendants’ that redactions should be “pinpoint” “as opposed to
21 pages or large sections and gaps”). Defendants’ “wholesale redactions” provide no context for
22 Plaintiffs to evaluate the propriety of the information withheld by Defendants and whether the
23 information withheld discloses internal vetting procedures used by USCIS to process Named
24 Plaintiffs’ applications for immigration benefits. *See* Dkt. 274 at 5.

25
26 ² Plaintiffs provide excerpts of one Named Plaintiff’s A-file, but concerns regarding the
scope and breadth of Defendants’ redactions span all Named Plaintiffs’ A-files.

VI. CONCLUSION

1
2 Plaintiffs respectfully the Court grant this Motion to Compel and order Defendants to
3 produce USCIS-generated analysis justifying Named Plaintiffs' immigration benefits
4 applications to CARRP. These documents are important to Plaintiffs' claims. Plaintiffs
5 alternatively request the Court review the Named Plaintiffs' A-files in camera to determine the
6 propriety of Defendants' redactions and whether further disclosure is warranted.
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1 Respectfully submitted,

DATED: January 9, 2020

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date indicated below, I caused service of the foregoing document via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 9th day of January, 2020, at Washington, DC.

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